IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

CRL.A.No. 1674 of 2003()

SC.153/2000 ON THE FILE OF THE ADDITIONAL SESSIONS JUDGE ADHOC II, THALASSERY

APPELLANT: IST ACCUSED

M.PRAKASHAN, S/O.GOPALAN,
DRIVER, NEENA NIVAS, KAITHARI,
KANDAMKUNNU AMSOM, THALASSERY TALUK.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT & STATE

1. THE SUB INSPECTOR OF POLICE, IRITTY.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM,.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 16/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Criminal Appeal.No.1674 OF 2003 (D)

Dated this the 16th day of July, 2007

JUDGMENT

Appellant petitioner along with two others were charge sheeted for transporting 94 cases of Indian Made Foreign Liquor containing 3264 bottles of New Master XXX Rum each having capacity of 180 ml. and 293 bottles of New Master XXX Rum each having capacity of 750 ml. in a lorry bearing registration No.KRC 2838. A2 who was alleged to be in the lorry ran away. According to the charge sheet owner of the lorry was A3 and A1 was the driver. It was found that there was no evidence to show that A3 was the owner of the lorry during the date of accident. A2 was not identified by any of the witnesses examined by the prosecution. Hence A2 and A3 were acquitted and only appellant was convicted. PW3 an independent witness partially supported the case and witnessed Ext.P1 scene mahazar. PW5 became hostile and PW6 was the photographer who had taken photos of the lorry

with the liquor. Other witnesses are official witnesses. The liquor were taken into custody. From the evidence, it was found that liquor was carried unauthorisedly in the lorry bearing registration No.KRC 2838 driven by the appellant violating Section 55(a) of the Abkari Act. It is contended that samples of all bottles alleged to be liquor were not sent for sampling and it is not proved that entire bottles contained liquor. All the bottles were sealed and labelled and a random samples were sent for examination. Therefore there is no reason to say that other bottles were filled with different liquids other than the one contained in the bottle sent for examination. Appellant had no such case before the police or trial court. The Indian made foreign liquor of large quantity was seized in which A1 was driving the lorry and we see no ground to interfere in the conviction under Section 55(a). Under Section 55(a), minimum amount of fine is Rs.1,00,000/-. He was sentenced to three years Rigorous Imprisonment and fine of Rs.1,00,000/-. Appellant was only a paid driver. The person who was in the lorry ran away. The real person involved in the offence was not caught. But appellant cannot escape from the liability as he cannot say that he transported such huge quantity without his knowledge of the consignment. Even otherwise ingredients under Section 55(a) are satisfied in this

case. But considering the huge amount of fine and considering the fact that this was the first offence the accused has committed and he was only a driver, we reduce the term of imprisonment from three years to two months and fine of Rs.1,00,000/-. He is entitled to the right of set off. If the fine is not paid, he will have to undergo Simple Imprisonment for another six months. With the above observations this appeal is partly allowed with regard to sentence but confirming the conviction.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.Appeal. OF 1998

JUDGMENT

14th March, 2007